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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Patrick J. Lennon, et al.
Serial No. 09/926,521
Filed April 26, 2002
Confirmation No. 6864
For NOVEL SURFACTANTS AND FORMULATIONS
Examiner S. Mark Clardy

Art Unit 1615

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RESPONSE TO RESTRICTION REQUIREMENT

TO THE COMMISSIONER FOR PATENTS,

SIR:

In response to the restriction requirement made in the action of June 5, 2003, Applicants elect the invention of Group IV (Claims 1-99 and 105-143) identified by the Examiner, with traverse.

In response to the species election requirement, Applicants elect: glyphosate or a salt or ester thereof as the active agent; alkyletheramine, alkyletheramine oxide or alkyletherammonium salt surfactants as described throughout the specification such as in the last sentence of paragraph 81, and paragraphs 82 and 85-90, and as represented at page 8 by formulas 7-10 as well as the formula given in paragraph 89; and oxalic acid as the dicarboxylic acid. At least claims 1, 29, 44, 52, 56, 67, 77, 91-98, 105, 107, 108 and 110, as well as claims 2-28, 30-43, 45-51, 53-55, 57-66, 68-76, 78-90, 99, 106, 109 and 111-143 that depend therefrom, read on the elected species.

According to MPEP §803, "[i]f the search and examination of an entire application can be made **without serious burden**, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."¹


In this case, restriction is not proper. Any search of the prior art and examination involving Group IV claims and the elected glyphosate species will necessarily co-extend with the search and examination of the claims of Groups II and III. Thus, as the examination of groups II, III and IV may be made without serious burden, the claims of these groups should be examined together in accordance with MPEP § 803.

¹ MPEP § 803 (emphasis added).

According to MPEP §809.02(c), an Examiner's action subsequent to an election of species should include a complete action on the merits of all claims readable on the elected species and according to MPEP §809.02(e), whenever a generic claim is found to be allowable in substance, action on the species claims shall thereupon be given as if the generic claim were allowed. Thus, if it is determined that the elected species is patentable, it is incumbent upon the Office to search additional species that fall within any allowable generic claims.

Applicants reserve the right to file divisional applications directed to the non-elected subject matter.

Respectfully submitted,



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